

Application Serial No. 10/624,810
Response Dated: May 10, 2006

REMARKS

Claims 1-24 remain pending in the present application, with claim 25 having been withdrawn without prejudice pursuant to a restriction requirement.

The Applicant will address the bases of rejection in Sections I-II, which follow.

I. Principle References under 35 USC §103

The present claims currently stand rejected as being allegedly unpatentable “over the admitted state of the art, hereafter ASA” in view of U.S. Patent No. 4,946,505 to Jungk (“Jungk”), and in some cases additional references. The Office action relies on paragraph 12 of the Declaration of Inventors Under 37 C.F.R. §1.131 (the “December 131 Declaration”), filed on December 5, 2005, as the source of “ASA.” For the reasons stated below, the Applicants respectfully traverse all the pending rejections and urge that they be withdrawn.

A. December 131 Declaration

The Office Action has relied upon the December 131 Declaration, paragraph 12, as the “ASA.” Paragraph 12 of the declaration reads as follows:

Our conception prior to April 22, 2002, of color dispersions comprising a pigment and a polymer binding agent dispersed in water in accordance with the present invention is shown, for example, at page 3 of Exhibit A, which states, “This situation is corrected with the addition of a polymer to the spray mix which has the property, when dried, to bind to the cured concrete and holding [sic] together the pigment particles.”

This statement proving the inventors’ conception of the present invention is not itself prior art and does not admit any prior art. (See MPEP Section 2129.) Nor is the rest of the December 131 Declaration any more relevant.

All prior art is defined by 35 USC Sections 102(a), (b), (e), (f), and (g). 35 USC Sections 102(a), (e), (f), and (g), which require prior art by “another” than the inventor, do not apply because the December 131 declaration and its Exhibit A are the work of the present inventors. The remaining prior art statute, 35 USC Section 102(b), does not apply either. The December

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131 declaration and its Exhibit A are not patents, were not even arguably printed publications when this application was filed in 2003, do not admit the existence or content of any patent or printed publication, and do not describe anything that was in public use or on sale more than one year before the present patent application was filed. (See MPEP Section 706.02(c).)

Therefore, for lack of any prior art reference or pertinent admission of prior art respecting the matters attributed to the December 131 Declaration, all rejections presently of record should be withdrawn.

B. U.S. Patent No. 4,946,505 to Jungk

The Office Action also has relied upon Jungk in each present rejection. The Applicants respectfully traverse because the Jungk reference does not disclose or suggest a pigment dispersion to be sprayed on the surface of uncured concrete as described in the present invention. The teachings of Jungk (to spray-dry or otherwise make dry granules that will homogeneously disperse in concrete as it is mixed) are inconsistent with directly spraying a liquid color dispersion onto the surface of an uncured concrete product. There is therefore no teaching, suggestion, or motivation provided in the prior art to modify Jungk and expect successful results.

Jungk is directed to a process of dyeing concrete using “granules which essentially consist of pigment and one or more binders for promoting the dispersing of the pigment in concrete.” (Jungk at Col. 2, lines 54-57) (emphasis added). In particular, Jungk discloses, “It is also possible to use particulate granules which are made by a drying of mixtures consisting of pigments, binders, liquid, preferably water, and optional other substances.” (Jungk at Col. 2, lines 64-67) (emphasis added). The admixture of dry pigment granules and concrete to homogeneously distribute the pigment in concrete is inconsistent with and does not suggest applying liquid pigments to the surface of an uncured concrete product to selectively color the surface of the concrete.

Jungk specifically teaches away from the use of liquid pigments, even a pigment paste that might be too thick to be sprayable: “Owing to the high water content, the costs of packaging and transporting the aqueous pigment pastes are doubled. Another important disadvantage resides in that such pastes cannot be used at all if the initial moisture content of sand and coarse aggregate used in making concrete is so high that an addition of water even in the form of

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aqueous concrete pastes will intolerably reduce the consistency of the concrete.” (Jungk at Col. 1, lines 61-68).

The February 6, 2006 Office Action states that “Jungk discloses using a slurry of 53% by weight pigment and 2% by weight binder, which is within the range of the applicant’s Claims 23 and 24, with the balance water (Example 1).” (February 6, 2006 Office Action at p. 4). Example 1 of Jungk, however, does not teach application of such a slurry directly onto concrete. Instead, the Example states that the slurry “is spray-dried in a countercurrent/cocurrent operation in a spray-drying plant comprising nozzles for atomizing under pressure” to form “freely flowable, coarse bead granules, which are free of dust and have a residual moisture content of 0.3 to 1.3%.” (Jungk at Col. 4, lines 33-42). This teaching of the formation of granules in Jungk is inconsistent with the use of a spray color dispersion to durably color the surface of a concrete article or extrusion.

The February 6, 2006 Office Action admits that “ASA in view of Jungk fails to explicitly teach binding the polymer binding agent with wet concrete.” (February 6, 2006 Office Action at p. 5.) The February 6, 2006 Office Action then goes on to state “However, the prior art and present claims, reflected by claims [sic] 11, teach all the same process steps and thus the results obtained by applicants process must necessarily be the same as those obtained by the prior art.” (February 6, 2006 Office Action at p. 5.) Applicants submit that this conclusion is incorrect. For example, Jungk teaches the formation of pigment granules that contain “one or more binders for promoting the dispersing of the pigment in the concrete” (Jungk at Col. 2, lines 56-57), and not the use of binders for binding a spray color dispersion with wet concrete. The process steps disclosed in Jungk are therefore significantly different from those disclosed in the present application, as is the function of the binding agent. There is no basis in Jungk from which to conclude that applying a pigment/polymer binding agent dispersion to a wet concrete surface would necessarily result in the polymer binding agent bonding to the wet concrete.

There is thus no indication in Jungk that the use of binders would be desirable or beneficial to modify a spray color dispersion for surface-coating concrete. One of ordinary skill in the art is not taught or motivated by Jungk to spray the pigment/binder mixtures of Jungk onto concrete, nor would the worker of ordinary skill have an expectation of success in making such a modification to arrive at Applicant’s invention as presently claimed.

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II. Remaining Rejections

The remaining rejections are combinations of the December 131 Declaration, Jungk, and in some instances other references. These rejections are overcome in light of the discussion. There is therefore no motivation to combine the two references with other references or expect that such combinations would lead to successful results.

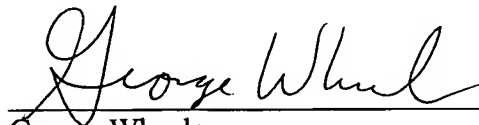
Conclusion

In view of the arguments set forth above, the Applicants submit that the currently pending rejection have been overcome. The Applicants therefore request that the Examiner allow all of the pending claims.

The Commissioner is hereby authorized to charge the fee associated with the Petition for a one month extension of time, believed to be \$120, as well as any additional fees that may presently required, or credit any overpayment, to Deposit Account No. 13-0017 in the name of McAndrews, Held & Malloy, Ltd.

Respectfully submitted,

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